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SUBJECT: EMBASSY ACTION ON KAMBAKSH DEATH SENTENCE CASE

REF: KABUL 207

Classified By: Ambassador William Wood for reasons 1.4 (B) and (D).

11. (C) Summary: Embassy Kabul has met with the brother of Sayad Parwez Kambakhsh, whose death sentence for distributing literature found by a local court to be offensive to Islam is on appeal (Ref). The Ambassador has communicated to senior Afghan officials U.S. concerns about the constitutionality of the case and is working discreetly to encourage an acceptable resolution. Embassy continues to pursue and recommend a private approach.

12. (SBU) On February 2, Embassy met with Kambakhsh's brother, Yaqub Ibrahimi, a reporter for the London-based Institute for War and Peace Reporting. We underlined U.S. support for freedom of religion, freedom of expression and media freedoms. We assured him we have made known to the Afghan government our concern that elements of his brother's case might not have met standards set by the Afghan constitution. We highlighted the importance of keeping the issue in legal channels and avoiding public statements that would make it more difficult to find an acceptable resolution.

13. (C) Ibrahimi agreed that the issue should be kept in the courts, where he believes an acceptable outcome is possible. The local court had rejected the provincial prosecutor's recommendation that the case could be tried under existing criminal statutes, and mullahs advised that application of sharia law required the death penalty. Ibrahimi claimed that moderate mullahs had advised him that, even when the courts rely on sharia law, there are differing interpretations of applicable penalty. However, some Afghan legal experts have told us they believe the resort to sharia law does in fact compel the death sentence in a case determined to be "blasphemy."

14. (C) The Ambassador has discussed the case privately with senior Afghan officials and secured the promise of the Saudi Ambassador to advise the government on Islamic approaches to resolve the case legally (and promptly) while preserving the rights of Kambakhsh. Embassy has also been in discreet contact with the Head of the Balkh Provincial Attorney General's Office, the Afghan Chief Justice, and the Attorney

General.

15. (C) Both the Chief Justice and the Attorney General have assured us they will be closely watching the case as it moves through the appellate process. Based on their comments, it appears the case will have to be resolved by the Supreme Court or President Karzai.

16. (C) Karzai must confirm any death sentence. He also has the authority to commute a death sentence or issue a pardon. During the weekly press conference on February 5, Karzai's press spokesman was asked about the case. He said "There is no need for the President to speak about the Kambakhsh case because there is a judicial process. Of course the President is concerned, and we are watching the situation very closely. We will follow the judicial process in consultation with the Ulema Council. Then, in accordance with the principles of the Afghan constitution as well as our international obligations in respect to human rights, the Afghan government will make a decision."

WOOD